Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

LARRY A. CROSSLEY

Petitioner,

vs.

LIBERTY BANK & TRUST CO., THOMAS J. HROMATKA, C.E.O., HERTZ FARM MANAGEMENT INC., GARY LOOS AS RECEIVER, FARMERS CO-OP ASSOCIATION FOREST CITY, FARMERS CO-OP ELEVATOR CO. LELAND, DON SEVERSON, GARY STERLING, RONALD G. PYLE, RONALD PENNING, AND YET TO BE NAMED JOHN DOES,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

PETITION FOR WRIT OF CERTIORARI

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42 pp

QUESTIONS PRESENTED

1. Certiorari should be granted to supervise the departure from the accepted and usual course of judicial proceedings.

2. Certiorari should be granted to resolve the conflict among the Eighth Circuit and the State Court relative to the application of Title 42 U.S.C. §1983, 1985(3), 1986, Title 7 U.S.C. §2000 et. seq. and Iowa Code 561, 656, 554, 646, 680, I.R.C.P. 258.

PARTIES TO THE PROCEEDING

Petitioner, Larry Crossley, is a resident of Todd County, Minnesota. Crossley was the plaintiff in the United States District Court for the Eighth Circuit proceedings of this case and was the Apellant before the United States Court of Appeals for the Eighth Circuit.

Respondents Liberty Bank & Trust Co. and Thomas J. Hromatka C.E.O., the bank is a corporate owned bank existing by virtue of the laws of the State of Iowa. Respondent Liberty Bank does business in Winnebago County, Iowa and was a defendant to the action in the lower court proceedings. Thomas J. Hromatka was the acting C.E.O. and a resident in Winnebago County and also a defendant in the lower court proceedings. Liberty Bank & Trust Co. and Hromatka were also an Appellee before the United States Court of Appeals for the Eighth Circuit.

Respondents Hertz Farm Management Inc. and Gary Loos as receiver, existing by virtue of and acting under the laws of the State of Iowa whose office is in Cerro Gordo County, Iowa and does business in North Central Iowa including Winnebago County, Iowa, were defendants to the action in the lower court proceedings. Gary Loos was acting as receiver in the Iowa District Court proceedings. Hertz and Loos were also Appellees before the United States Court of Appeals for the Eighth Circuit.

Respondents, Farmers Co-op Assoc. Forest City, Farmers Co-op Elevator Co. Thompson, Farmers Co-op Elevator Co. Leland, the grain elevators are cooperatives organized and operating by virtue of the laws of the State of Iowa. Rake Cooperative Elevator of Rake Iowa own Thompson and Leland Cooperative Elevators. Respondents Don Severson, Gary Sterling, Ronald G. Pyle and Ronald Penning are or were acting as elevator managers or assistant managers for the defendant grain elevators and all are or were doing business in Winnebago County Iowa and were defendants to the lower court proceedings. The three grain elevators were cooperatives and managers or assistant managers were also Appellees before the United States Court of Appeals for the Eighth Circuit.

There are John Doe and Jane Doe defendants that were to be named prior to trial as discovery was completed.

There are no other parties to this action.

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OPINIONS BELOW

On January 10, 1996, the United States Court of Appeals for the Eighth Circuit issued its opinion, affirming the decision of the District Court. That opinion was unpublished.

On July 1, 1996, the United States Court of Appeals denied the suggestion for rehearing en banc, and also petition for rehearing by the panel was also denied.

STATEMENT OF JURISDICTION

Petitioner seeks review of the opinion of the United States Court of Appeals for the Eighth Circuit and its judgment of July 1, 1996. That judgment affirmed the lowe~ court's grant of summary disposition. Petitioner invokes the certiorari jurisdiction conferred on this Court by 28 U.S.C. §1254(1).

STATUTE INVOLVED

42 U.S.C. §1983 provides:

§1983. Civil Action For Deprivation Of Rights.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall

be considered to be a statute of the District of Columbia.

42 U.S.C. §1985(3) provides:

§1985(3). Conspiracy To Interfere With Civil Rights.

(3) If two or more persons in any State or Territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice

President or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case

of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 §1986 provides:

§1986. Action For Neglect To Prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damage may be recovered in an action on the case; and any number of persons guilty of such

wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

7 U.S.C. §2000

§2000. Homestead Protection.

(3) The term "homestead property" means the principal residence and adjoining property possessed and occupied by a borrower specified in paragraph (2) of this subsection, including reasonable number of farm out buildings located on the adjoining land that are useful to the occupants of the homestead, and no more than 10 acres of adjoining land that is used to maintain the family of the individual.et.seq.

Iowa Code §561.

§561. Homestead.

561.16 Exemption.
The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For the purposes of this section, *"household unit"* means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

561.21 Debts For Which Homestead Liable.
The homestead may be sold to satisfy debts for each of the following classes:
1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.
2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a

deficiency remaining after exhausting all other property pledged by the same contract for the payment of debt.
3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.
4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

Iowa Code §656

§656 Forfeiture Of Real Estate Contracts.

Iowa Code §554 Uniform Commercial Code.

§554.9307, §554.9313, §554.9315, Rights of Third Parties-Perfected and Unperfected Security Interests-Rules of Priority.

Iowa Code §646 Recovery of Real Property.

§646.23 Growing Crops-Bond. If the defendant avers that the defendant has a crop sowed, planted, or growing on the premises, the jury, finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the

date of the trial until the first day of January next succeeding, and no execution for possession shall be issued until that time, et. seq.
§646.24 Writ of Possession.
When the plaintiff shows that the plaintiff is entitled to the immediate possession of the premises, judgment shall be entered and an execution issued accordingly.

Iowa Code §680 Receivers.

§680.1 Appointment.
On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in , any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and

> coerce the delivery of it to the receiver.

Iowa Rules of Civil Procedure rule 258.

> Rule 258. Execution; Duty of Officer.

STATEMENT OF THE CASE

This matter concerns a state foreclosure action of real estate purchased by Donald and Patricia Crossley on contract from James and Frances Ballard in 1973. In April of 1985 Donald and Patricia Crossley gave Forest City Bank and Trust co. an assignment for security purposes of their vendee's interest in the property. Forest City Bank and Trust and Donald and Patricia Crossley let their Vendee's interest go into default on April 1, 1986. With the real estate contract in default Frances Ballard vendor in Oct. of 1986 sold certain of and assigned all of her interest in the property as vendor to Larry Crossley.

On October 20, 1988, Liberty Bank and Trust filed a petition to foreclosure their vendee's interest in the real estate contract in the Iowa District Court which named Donald and Patricia Crossley and Larry Crossley and France Ballard as defendants' in Case No. 13978.

Defendants, Donald and Patricia Crossley asserted counter claims against the Bank for fraudulent misrepresentation and breach of contract. These defendants also asserted a counter claim for breach of an implied duty of good faith and fair

dealing arising out of a bank/customer relationship. The counter claims were tried to a jury which found against the Donald and Patricia Crossley. As a result of the jury's verdict, the counter claims were dismissed by order of Judge Jon Stuart Scoles in the foreclosure action filed on October 24, 1990.

On October 24, 1990, the Court entered its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, the court entered judgment in favor of Liberty Bank and against Donald and Patricia Crossley in the amount of 332,324.78, plus interest. In addition, the order provided that counsel for the Liberty Bank should prepare a DECREE OF FORECLOSURE to be entered by the court.

On May 13, 1991, the court filed its DECREE IN FORECLOSURE, and provided for foreclosure of the equitable mortgage. Liberty Bank set redemption at six(6) months and WAIVED ANY RIGHT TO A DEFICIENCY AGAINST THE DEFENDANT'S IN CASE NO. 13978.

The Winnebago County Court in their decree in foreclosure never obtained a judgment against defendants Larry Crossley or France Ballard.

In its order of the Winnebago County Court Decree dated May 13, 1991 the Iowa District Court at p.2 stated:

> 2. The plaintiff's equitable mortgage is established as a lien against the real estate above described and is superior and paramount to the interest, liens and claims of the defendants, except to the extent of the

> vendor's interest in the real estate contract executed on March 23, 1973. The court need not decide in this proceeding whether Frances Ballard or Larry Crossley has legal or equitable title to the property, because that is not in issue in this foreclosure action. The vendor's interest in the property, whomever may later be determined to hold it, is superior to the interest foreclosed upon by the plaintiff.
> On July 12, 1991, Appellant-Crossley filed his declaration of Homestead with the Winnebago County recorder, homestead book, page 98-9.

On July 17, 1991, the property was sold at sheriff's sale to Liberty Bank, for the sum 405,271.43, representing the entire judgment, interest, attorney feeds, and cost amount to obtain the farmland.

On January 21, 1992, following the expiration of a six month period of redemption, Appellee Bank traded in their writ of possession to get sheriff's deed that was issued in favor of Liberty Bank, the decree stated,

> "On expiration of the period of redemption for the mortgaged real estate, if possession be not immediately then surrender (sic) to the grantee of the sheriff's deed to be issued under said execution, a writ of possession shall be issued directing the sheriff of this county to put such

grantee in possession of mortgaged premises."

On March 25, 1992, Liberty Bank and Hertz Farm Management Inc., filed and served the defendants with a petition in small claims court on a action for Forcible Entry and Detainer, Case No. 8-4997-0392.

On April 16, 1992, small claims court came on for hearing in magistrate court, defendants argued that the magistrate court did not have jurisdiction. Magistrate ruled against the defendants and order a writ of possession to be used against the defendants immediately, and directed that the defendants Larry, Donald and Patricia Crossley be removed from the premises and that Liberty Bank and Hertz Farm Management Inc. be put in possession thereof.

On April 20, 1992, defendants posted bond and filed appeal to the Winnebago District Court, hearing was held in May of 1992, on the defendants' appeal.

On June 16, 1992, Judge Stephen Carroll entered the courts ruling and filed same on June 17, 1992, court stated on page 8, of ruling, "The court therefore concludes that the magistrate did not have jurisdiction to hear this case, the district court does." "Accordingly, the magistrate's court ruling should be reversed and the case dismissed. Court goes on to state, "IT IS THEREFORE ORDERED that plaintiff's action for FORCIBLE ENTRY AND DETAINER brought in the Iowa District Court Small Claims Division, is DISMISSED."

On June 29, 1992, the Appellee Liberty Bank filed a praecipe for writ of possession, directing the clerk of court to issue a writ of possession in compliance with the decree in foreclosure dated May 13, 1991, five months after they had received a sheriff's deed.

On July 31, 1992, the sheriff of Winnebago County removed defendants from their homestead, and without a judgment against Appellant-Crossley and with Appellee Liberty Bank waiving their judgment against the homestead.

On June 2, 1993, Appellees Liberty Bank filed and recorded an amended sheriff's deed with the Winnebago County recorder book 281, page 127, and later on June 17, 1993, Appellee Liberty Bank filed the amended sheriff's deed with the Winnebago County Clerk of Court.

On July 23, 1991, Appellant-Crossley filed his Federal Complaint where it showed that the defendants' had violated his constitutional rights, violations of 42 U.S.C. sections 1983, 1985, 1986, and RICO. On April 6, 1992, Judge Donald E. O'Brien, Chief Judge of the United States District Court dismissed Appellant-Crossley's Complaint that stated, "IT IS FURTHER ORDERED that if plaintiff fails in his attempt to have the Iowa District Court's Order of November, 1990, overturned, he may refile, without payment of any additional fees, any new and different claims than those previously asserted. "This was Case No.C91-3050.

On December 22, 1993, the clerk of the United States District Court for the Northern District of Iowa Central Division

gave Appellant-Crossley a new Case No. 93-3083.

On June 13, 1994, Appellant-Crossley filed his Civil Complaint with Case No. C93-3083 with violations "liberty" and "property" rights, "civil rights", violations by the defendant-appellees' of the 1st, 4th, 5th, 7th, and 14th Amendments of the United States Constitution; violations of Title 42 §1983, 1985(3), 1986 and Iowa Code Statutes 561, 561.21, 561.4, 654, 680, 554, 561.16, 646, I.R.C.P., Rule 258.

On October 27, 1994, Judge Mark W. Bennett, U.S. District Court Judge filed his order pursuant to Case No. C93-3083, regarding defendants' Motions to Dismiss Appellant-Crossley's Complaint and did error in it's order that states,

> "In the prior state court proceedings, and in Crossley I, Crossley raised challenges to the propriety of the foreclosure proceedings, the sheriff's sale, the sale of the crops from the 1992 season, and the notice of first refusal. This series of legal actions, which all concerned the events surrounding the foreclosure of the real estate in question, are the same actions which Crossley challenges in this case. The court has little difficulty concluding that the claims asserted by Crossley involve "the same nucleus of operative fact" previously litigated in Crossley I and the Iowa State Courts. Therefore, the

> court finds that Crossley's claims against Defendant Liberty Bank & Trust are barred by operation of res judicata, and the court shall grant Defendant Liberty Bank & Trust's motion for summary judgment."

On November 4, 1994, Appellant-Crossley filed his motion to court pursuant to F.R.C.P., Rules 52(b) and Rule 59 with motion, brief and affidavit in support of, Appellant-Crossley asserted that the court made factual and legal errors in its order of October 27, 1994, in granting defendants' motions to dismiss.

On January 5, 1995, Mark W. Bennett, United States District Judge denied Appellant-Crossley's motion pursuant to F.R.C.P., Rules 52(b) and Rule 59.

On February 6, 1995, Appellant-Crossley appealed Judge Mark W. Bennett order's to the United States Court of Appeals for the Eighth Circuit, the court did error in not fully complying with Rule 56's notice requirements.

The case was submitted December 29, 1995 to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals affirmed the holding of the lower court on January 10, 1996.

Petitioner now seeks the review of this Court.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO SUPERVISE THE DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

Apellant-Crossley alleged violations of his Liberty and property rights in his complaint against the named defendant-appellees. Appellant-Crossley alleged deprivation of his homestead by named defendants and deprivation of his 1992 crops by the named Appellees. The Appellees filed Rule 12(b)(6) motions to dismiss and did not file any type of answer to Appellant-Crossley's Complaint. No Rule 56 motions for summary judgment were filed by Appellee's. The Supreme Court Justice, Rehnquist, held in CELOTEX CORP. V. CATRETT 106 S. Ct. 2548 (1986), that: (1) Rule 56(c) mandates the entry of summary judgment after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case as to which that party will bear the burden of proof at trial; (2) there is no requirement that moving party support its motion with affidavits or other similar materials negating the opponent's claim; and (3) nonmoving party need not produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Appellant-

Crossley asked the court for time to do discovery and Appellant-Crossley was denied by the Court. Crossley was denied adequate time to do discovery.
Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury but also for the rights of persons opposing such claims and defenses to demonstrate, in the manner provided by the rule prior to trial, that the claims and defenses have no factual basis. Fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A. Federal Civil Procedure 2461.

Party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A.

The trial court did error in turning appellee's motion to dismiss into motion for summary judgment without notice to Appellant-Crossley, when no depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. There are numerous genuine issues of material facts that were ignored by the District Court. For example, there was no judgment against

Crossley, Crossley was removed from his homestead, Crossley was deprived of his crops, Appellees only filed motions to dismiss, Howard L. Draper did not timely file Hertz Farm Management Inc.'s motion to dismiss, Appellees elevators violated and ignored the Iowa Code Statutes 554, et. seq. U.C.C., Liberty Bank's first Sheriff's Deed was void, Liberty Bank used their writ of possession prior to the removal of Crossley, Larry Crossley still has paramount title to subject property, Liberty Bank has not tendered the full amount owing on the March 23, 1973 real estate contract, and the named Appellees did conspire to deprive Larry Crossley of his Constitutional Rights. Appellees defendants did not show that they were entitled to a judgment as a matter of law. Summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CELOTEX CORP. V. CATRETT, 477 U.S. 317, 322, 106 S. CT. 2548, 2552, 91 L. Ed. 2d 265 (1986); CONTINENTAL GRAIN CO V. FRANK SEITZINGER STORAGE, 837 F. 2d 836, 838 (Eighth Circuit 1988). A moving party is "entitled to judgment as a matter of law: if the nonmoving party fails to make a sufficient showing of an essential element of a claim with respect to which it has the burden of proof. Id. 477 U.S. at 323, 106 S. Ct. at 2552 JOHNSON V. SCHOPF, 669 F.

Supp. 291, 295 (D Minn. 1987). However, summary judgment should not be granted if a reasonable jury could return a verdict for the nonmoving party. ANDERSON V. LIBERTY LOBBY, INC., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). The Appellee's filed Rule 12(b)(6) motions to dismiss and did not file any type of answer to Appellant-Crossley's Complaint. No Rule 56 Motions for summary judgment where filed by the Appellees gave no explanation for the taking of Appellant-Crossley's homestead and Appellant's 1992 crops. Appellant-Crossley explained to the court that there were no judgments in the State Court action against him, and also explained that the Appellee Bank had waived any right to a deficiency judgment and therefore according to IOWA CODE STATUTE 651.16, states, "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." GREEN V. FORNEY, 1907, 134 Iowa 316, 111 N.W. 976. To merely mark out, plat and record a tract of ground as a homestead, is not sufficient to make it such. Its occupancy and use, as a home, by the family, are the essential requirements. COLE V. GILL, 1863, 14 Iowa 527. In order to render premises occupied by a family exempt as a homestead, no plat need be filed. YOST V. DEVAULT, 1859, 9 Iowa 60. IOWA CODE STATUTE 561.4 Appellant filed the declaration of homestead with the Winnebago County, recorder in homestead book on page 98-9. Appellant-Crossley also filed with the Winnebago County

recorder an affidavit of right of possession on July 12, 1991, book 10, page 277-8. IOWA CODE STATUTE 561 AND 628 gives a person that is being foreclosed on certain rights. "Vendors, who were authorized to claim as much as 40 acres in homestead property...". BECKER V. GUSTAFSON, 279 N.W. 2d 744. Appellant was in possession of the homestead and resident of the household unit and Appellees Bank had waived deficiency judgment on subject property and therefore can not show that a receiver was needed or appropriate, BENNETT V. ELDON MILLER, INC., 106 N.W. 2d 257. Appellee Hertz Farm Management Inc., has caused damage to Appellant, Crossley was forced to pay rent to the receiver on land that they had no right to possession of, the receiver canceled Appellant-Crossley's insurance policy on the property. THE SUPREME COURT OF IOWA will allow the appointment of a receiver in the case of a deficiency. See COMMUNITY STATE BANK V. COTTINGTON, 444 N.W. 2d 487, and cases cited therein. However, the court may not appoint a receiver where a deficiency has been waived see FEDERAL LAND BANK V. FAUGHT BROS., 468 N.W. 2d 793, 795 (Iowa 1991). "Where the right to a deficiency has been waived there exists no right to appoint a receiver based on a claimed potential for deficiency." It is interesting to note that the same Iowa District Court Judge heard the Faught case as well as the Crossley case, in both cases the District Court Judge appointed the receiver when any right to a

deficiency judgment had been waived in both cases.

Appellant-Crossley alleged Constitutional Violations of "good faith" and "obligation of contract clause" guaranteed by the 1st and 14 Amendments of the U.S. Constitution in his Complaint, which happens to be Constitutional issues, as Appellant finds support in MORELLO VS. JAMES, 810 F. 2d 344 (1987) which states:

> "dismissal reversed as every citizen has right of access to the courts where oppression damages on constitutional grounds are alleged as allegations must be accepted as true."

Like the Old demurrer, a motion to dismiss admits the well pleaded facts in the complaint for the purpose of testing their legal sufficiency. GREENLAND V. FAIRTRON CORP. 500 N.W. 2d 36, 37 (Iowa 1993). The motion may not be supported by its own allegations of fact not contained in the complaint. Where upon full reading of Appellant's complaint it is clearly alleged of violations of these Amendments as well as others wherein acts, actions, conduct, and policies of the defendants' have inflicted severe irreparable damages upon Appellant and innocent third persons where the Federal Court did error in not meriting denial of Appellees' motions to dismiss.

Had the facts been viewed in a light most favorable to the Petitioner, the motion for summary judgment would have been denied. This is because the record did support issues for trial. Instead the

circuit court acted as a super jury and decided the facts against the Petitioner. This was reversible error.

Petitioner submits that certiorari should be granted because the Eighth Circuit's judgment departed from the accepted and usual role to be performed by a court on motions for summary judgment. This case should have proceeded to trial on the merits. This Honorable Court should reject the Court of Appeals' insistence on being a fact finder.

II.

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT AMONG THE EIGHTH CIRCUIT AND THE STATE COURT RELATIVE TO THE APPLICATION OF TITLE 42 U.S.C. §1983, 1985(3), 1986, TITLE 7 U.S.C. §2000 ET. SEQ. AND IOWA CODE 561, 656, 554, 646, 680, I.R.C.P. 258.

Appellent-Crossley dispossessed from his homestead, they had his crops harvested and hauled to three local Elevators which are all named defendants in his complaint, the named appellee-defendants and managers had actual knowledge of the "notice of security interest in farm products" that is filed with the secretary of State of Iowa. UCC filings which states "This notice is tendered pursuant to IOWA CODE STATUTE 554.9307, as amended, and Public Law 99-198, para. 1324." The respondent Elevators/Managers were in contact with

Liberty Bank & Trust Co. and ignored the UCCs and issued moneys to Liberty Bank for Crossley's grain, Crossley received no money, there actions are in direct conflict with Iowa Code §554. "Where private entity acts in concert with state actor, private entity is also subject to liability under this section." Title 42 U.S.C.A. Statute 1983" THREE RIVERS CABLEVISION, INC. V. CITY OF PITTSBURGH, D.C. Pa. 1980, 502 F. Supp. 1118. "To state a claim under 42 U.S.C. Section 1985(3) a complaint must allege four elements", GRIFFIN V. BRECKENRIDGE, 403 U.S. 88, 102-03 (1971), Appellant-Crossley did alleged all four elements in his complaint, and has alleged discriminatory motive on the part of the conspirators. MASSEY V. SMITH, 555 F. 2d 1355, 1356 (Eighth Circuit 1977). Appellant-Crossley's complaint did state a claim under title 42 U.S.C. section 1983, 1985 and 1986. "A cause of action under section 1986 is dependent on a valid claim under section 1985. SEBASTIAN V. UNITED STATE, 531 F. 2d 900,904 n.11 (Eighth Circuit 1976), cert. denied, 429 U.S. 856 (1976); KAYLOR V. FIELDS, 661 F. 2d 1177, 1184 (Eighth Circuit 1981).

Appellant filed new and different claims against different appellee's on June 13, 1994, with the court, the complaint alleged violations of due process of law, liberty and property rights which are Civil right, which appellees' defendant's violated Appellant's 1st, 4th, 5th, 7th, and 14th Amendments of the United States Constitution, violations of Iowa Code

Statutes 561, 561.21, 561.4, 654, 680, 554, 537, 561.16, 646, I.R.C.P., Rule 258, Title 28 U.S.C. 1331, 1332, and 1343, Title 42 U.S.C. §1983, 1985, and 1986. All violations took place after Judge O'Brien's order dated April 6, 1992, the District Court would not acknowledge this fact and the fact that the Respondents were not named Defendants in my first case in Federal District Court. The Winnebago District Court order dated October 13, 1993, on the 1992 crops was an erroneous decision of the court "an erroneous decision does not bind the parties in a subsequent action on a different cause of action" SWANK V. ST PAUL CITY RY. (1895) 61 Minn. 423 63 N.W. 1088: U.S. Moser (1924) 266 U.S. 236.

Appellant-Crossley filed his motion pursuant to Rule 59 with the hopes that the search for truth in the light of justice be accomplished pursuant to truth, justice and adjudication on full material facts without "conclusions" used which are untrue, unfounded and without statute or constitutional foundations where everyone should be aware of two (2) basic principles in jurisprudence with keeping in mind the warning expressed by Justice Brandeis in his dissenting opinion as found in OLMSTEAD VS. UNITED STATES, 48 S. CT. CT. 564 (1925) states,

> "If the government becomes a law-breaker, it breeds contempt for its laws."

Defendant's-Appellee's herein, one and all, have once again brought fraud upon this Court by the very findings of their pleadings as filed. These are

"conclusions" as dismissal of Appellant's complaint was entered without Appellant's issue's being heard so the court based its "conclusion" had to be based either on "political reason" or "moral personal reason", both which are not founded with either the "commands" of the Constitution of the State of Iowa which is found in a very recent decision by the United States Supreme Court, Justice Kennedy wrote so very clear of the mandates of all federal courts which were denied to Appellant. See UNITED STATES VS. GOOD REAL PROPERTY, 114 S CT. 492 (1994) where the following statement is made as

> "Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather, we examine each constitutional provision in turn."

Appellant-Crossley herein hopefully pray the facts will surface in the search for the truth, since Appellant's allegations must be accepted as true is supported against all Defendant-Appellees as seen in ANDERSON VS. BOYD, 714 F. Supp. 906 (1983) wherein is found the following:

> "Dismissal reversed as judges and court officials are not immuned from civil rights allegations and a motion to dismiss for failure to state a claim does not override civil

> rights allegations as complaint must be liberally construed as allegations must be accepted as true."

Appellant's allegations in complaint that has been buried without redress which are Constitutional rights of Appellant by the 7th Amendment of the U.S. Constitution and the Constitution of the State of Iowa. Appellant's issues is reversible error where as found in GENERAL MOTORS CORP. VS. BLEVINS, 571 F. Supp. 38 (1956) opinion reveals that,

> "Right and justice is right to contract protection of the 14th amendment as protection is a mandated constitutional right."

Appellant finds support in WILLIAMS VS. DRESSER INDUSTRIES INC., 795 F. Supp. 1144 (1992) states:

> "Concealment of material facts may amount to fraud... where the concealment is of intrinsic of the article which the other party by the exercise of ordinary prudence and caution could not discover (cit.); and misrepresentation may be perpetrated by acts as well as words and by artifices designed to mislead."

Discovery is a due process right wherein dismissal of Appellant-Crossley's complaint did deprived Crossley of "due process" in civil matter, CHAPMAN VS. CALIFORNIA, 87 S. CT. 824 (1967) that states:

"Constitutional rights requires due process.:

See also EX PARTE VIRGINIA, 100 U.S. 339 (1879) Wherein the entire opinion came down to the following:

"14th Amendment requires "due process" and "equal protection" of property rights.:"

"Due process" is a "peoples right" see HOLDEN vs. HARDY, 18 S. CT. 833 (1898) wherein as seen in HUGHES vs. ROWE, 101 S. CT. 6 (1980) holds:

"Action without full hearing is a "due process" violation and a civil rights violation as well."

The Federal Court's decision in this case has been in conflict with all of the cases cited so far in this petition, the merits of this case have been totally overlooked, in RINALDI vs. YEAGER, 86 S. CT. 1497 (1966) where it states,

"equal protection is constitutional right where denial of access to the courts is found."

Appellant-Crossley finds support in UNITED STATES vs. GOOD REAL PROPERTY, supra, as it must also be respectfully seen by review of OWEN vs. HAAS, 661 F. 2d 1242 (1979) states:

Summary judgment reversed as implied power with gross negligence combined with deliberate indifference in local body is a person with proper jurisdiction with right of discovery with failure to state a claim motion reversed as parties have right to amend

> complaint as there is alleged actual and implied knowledge found is civil rights complaint that should not be dismissed at pleading stage."

Curiously the Eighth Circuit engaged in no real historical or legislative analysis of § 1983, 1985(3), 1986. If it had it would have had to address the cases cited in this petition. No analysis of Crossley's liberty and property rights were addressed by the Federal District Court and undoubtedly not reviewed by the Eighth Circuit Court of Appeals.

Petitioner submits that certiorari should be granted because the Eighth Circuit judgment is in conflict with the previous Circuit Court decisions and United States Supreme Court decisions, along with the Iowa Supreme Court decisions. This case should have proceeded to trial on the merits. This Honorable Court should reject the Court of Appeals decision and supervise the application of Iowa Code and Federal Code.

CONCLUSION

One would have to conclude, therefore, that the highest Court of the land has indeed, provided a clue to whether the irregularities of the District Court should bar redress of federal statutes, Civil Rights, and Constitutional Rights to citizens of this Country. Petitioner maintains that it would be illogical to conclude that this Court would wish to see an inconsistent application of the cases decided by this Honorable Court and Lower Courts. Why would this Honorable Court abandon the Constitution as to some Federal Statutes and not do so as to others? Of course, there is no good reason to suppose, that would be this Court's approach; which makes it important for certiorari to be granted in this case to settle the conflict that has persisted among the circuits on this issue.

Application of the decision in this case undermines the very purpose of 42 U.S.C. §1983,§1985(3), and §1986. This position is taken by several Courts of Appeal. For this reason, Petitioner submits that this Honorable Court should resolve the conflict.

Respectfully submitted,

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APPENDIX A - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED JULY 1, 1996

No. 95-1437NISC

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LARRY A. CROSSLEY,

Plaintiff-Appellant,

V.

Liberty Bank & Trust Co., etc.,
et al.,

Defendants-Appellees.

Order Denying Petition for Rehearing
and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc
is denied.
The petition for rehearing by the panel
is also denied.

Decided and Filed July 1, 1996

Order entered at the discretion
of the Court:
Michael E. Gains
Clerk, U.S. Court of Appeals,
Eighth Circuit

APPENDIX B - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED JANUARY 10, 1996

No. 95-1437

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LARRY A. CROSSLEY,
Plaintiff-Appellant,

V.

Liberty Bank & Trust Co., etc., et al.,
Defendants-Appellees.

Submitted: December 29, 1995

Filed: January 10, 1996

Before WOLLMAN, MAGILL, and HANSEN, Circuit Judges.

PER CURIAM.

Larry Crossley appeals from the district court's[2] orders granting summary judgment in favor of defendants, and denying his motion for reconsideration.

Having carefully reviewed the record and the parties' briefs, we conclude the judgment of the district court was correct. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH COURT.

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[2]The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.